

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JENNIFER D. SCHOLL,

Plaintiff,

vs.

MARTY ADE, dba NCK TOOLS,
INC., and STEVEN E. ROBBINS,

Defendants.

4:18-CV-3039

MEMORANDUM AND ORDER

On August 5, 2021, the jury in this matter returned a verdict for the plaintiff, Jennifer Scholl, and determined that her total damages were \$250,000.00. The jury also determined that the plaintiff was contributorily negligent, and found that 35 percent of the total negligence was attributable to her. The Court finds that pursuant to Neb. Rev. Stat. § 25-21,185.09, the plaintiff's total damages shall be diminished by the percent negligence attributable to her. Thus, the plaintiff's recovery for damages, as found by the jury, is \$162,500.00.

The parties stipulated that the plaintiff was not wearing her seatbelt when the collision litigated in this matter occurred. Further, the plaintiff stipulated to a five percent reduction in the plaintiff's recovery of damages pursuant to Neb. Rev. Stat. § 60-6,273, should the jury return a verdict in her favor.

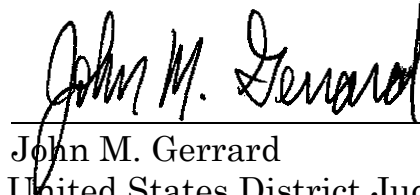
Section 60-6,273 provides that evidence a person was not wearing a seatbelt "shall not be admissible in regard to the issue of liability or proximate cause but may be admissible as evidence concerning mitigation of damages, except that it shall not reduce *recovery for damages* by more than five percent." The Court finds that the statutory text directs the Court to reduce the

plaintiff's "recovery for damages" by five percent. The statutory text does not direct the Court to subtract five percent from the plaintiff's "total damages" that the jury assessed. Thus, the Court reduces the \$162,500 recovery as found by the jury by 5 percent, *i.e.*, the sum of \$8,125. Accordingly,

IT IS ORDERED that a separate judgment will be entered in favor of the plaintiff in the amount of \$154,375.00.

Dated this 5th day of August, 2021.

BY THE COURT:

A handwritten signature in black ink, reading "John M. Gerrard", is written over a horizontal line.

John M. Gerrard
United States District Judge